

1 Trenton R. Kashima (SBN 291405)
2 **MILBERG COLEMAN BRYSON**
3 **PHILLIPS GROSSMAN, PLLC**
401 West Broadway, Suite 1760
San Diego, CA 91942
Telephone: (212) 946-9389
Email: tkashima@milberg.com

5 Laurence D. King
6 **KAPLAN FOX & KILSHEIMER LLP**
1999 Harrison Street, Suite 1560
Oakland, CA 94612
Telephone: 415-772-4700
Facsimile: 415-772-4707
Email: lking@kaplanfox.com

9 *(Additional Counsel listed on signature page.)*

10 *Co-Lead Interim Class Counsel for Plaintiffs*
11 *and the Class*

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 In re: Nestle Boost Nutritional Drink Litigation

Case No. 3:21-cv-09812-JSC

16 **PLAINTIFFS' ADMINISTRATIVE**
17 **MOTION PURSUANT TO LOCAL**
18 **RULE 7-11 TO EXTEND BRIEFING**
19 **SCHEDULE OR IN THE**
20 **ALTERNATIVE MOTION PURSUANT**
21 **TO LOCAL RULE 6-3 FOR**
22 **ENLARGEMENT OF TIME**

1 Pursuant to Civil Local Rule 7-11, Plaintiffs Bruce Horti, Sandra George, and Steven Owen
2 (“Plaintiffs”) submit this administrative motion pursuant to Civil Local Rule 7-11(a) to consider
3 whether the briefing schedule for Defendant Nestle Healthcare Nutrition, Inc.’s (“Defendant”) Motion for Summary Judgement as to the Named Plaintiffs (ECF No. 83) should be coordinated
4 with the previously ordered briefing schedule for Plaintiffs’ Motion for Class Certification (ECF
5 No. 77). Alternatively, pursuant to Local Rule 6-3, Plaintiffs request that the Court extend the
6 current briefing schedule for Defendant’s Motion for Summary Judgement as to the Named
7 Plaintiffs (ECF No. 83). Pursuant to Local Rules 7-11 and 6-3, this motion is accompanied by the
8 Declaration of Laurence D. King (“King Decl.”).
9

10 On February 7, 2025, Defendant moved for summary judgement as to the named Plaintiffs
11 and noticed the hearing for March 27, 2025. ECF No. 83. Prior to filing, Defendant did not inform
12 Plaintiffs or the Court that it would file a motion for summary judgment *prior to class certification*
13 despite numerous opportunities to do so. *See* ECF Nos. 75 (December 3, 2024 Administrative
14 Motion to Extend Class Certification Schedule) and 81 (January 16, 2025 Joint Further Case
15 Management Statement). While Defendant may have the right to move for summary judgment, it
16 would be far more efficient for the parties and the Court for the remaining briefing to be coordinated
17 with the already-scheduled briefing and hearing on Plaintiffs’ Motion for Class Certification.
18 Plaintiffs’ counsel met and conferred and corresponded with counsel for Defendant on February
19 11, 2025. King. Decl. ¶2. Defense counsel would not agree to concurrent briefing schedules and a
20 single hearing for class certification and summary judgment, stating that it would be beneficial and
21 expeditious for the Court to resolve the summary judgment issues prior to class certification. *Id.*
22 Defendant did offer a modest extension to the briefing schedule on its summary judgment motion
23 as an alternative. *Id.* at ¶3.

24 Under the Local Rules, Plaintiffs’ opposition to the Motion is currently due February 21,
25 2025, and Defendant’s reply is due February 28, 2025. ECF No. 83. However, Plaintiffs’ motion
26 for class certification is due March 10, 2025, prior to the hearing on Defendant’s motion for
27 summary judgment noticed for March 27, 2025. ECF No. 77. In this case, and under the current
28 briefing schedule, it would be inefficient for the Court to entertain staggered briefing and hold two

1 separate hearings on the related motions, both of which bear on the named Plaintiffs' adequacy and
2 typicality. King. Decl. ¶4.

3 Alternatively, counsel for Defendant offered Plaintiffs' an extension of two weeks for their
4 opposition to Defendant's motion for summary judgment. *Id.* ¶3. Counsel for Defendant would not
5 agree to move the noticed hearing date, but agreed for Plaintiffs' opposition to be due March 4,
6 2025 with the reply to be due March 13, 2025. *Id.* While the courtesy is appreciated, it does not
7 resolve the inefficiency of briefing these related motions on separate schedules and having two
8 separate hearings. *Id.*

9 Furthermore, if Defendant wished to truly resolve the issue of summary judgment as to
10 named Plaintiffs in an expeditious and resource-effective way, it could have done so much sooner
11 as depositions of named Plaintiffs concluded in October, 2024. *Id.* at ¶5. Finally, and at a minimum,
12 Defendant should have informed Plaintiffs of its intentions with regard to summary judgment
13 including the timing when the parties were negotiating an extension to the schedule for class
14 certification – which Defendant vigorously opposed. *Id.* Defendant was obviously aware of its
15 intentions at the time of those negotiations; it should have raised the issue then.

16 Therefore, in the interest of judicial economy, Plaintiffs request that the Court set the
17 briefing schedule for Defendant's Motion for Summary Judgment as to the Named Plaintiffs (ECF
18 No. 83) concurrently with the previously ordered briefing schedule for Plaintiffs' Motion for Class
19 Certification (ECF No. 77) as follows:

20 Class Certification	Summary Judgement	Date
21 Opposition to Motion for Class 22 Certification	Opposition to Motion for Summary Judgement	April 21, 2025
23 Reply in Support of Class 24 Certification	Reply in Support of Summary Judgement	May 12, 2025
25 Hearing on Motion for Class 26 Certification	Hearing on Motion for Summary Judgement	June 5, 2025 at 10 a.m.

27 Currently, the only deadlines in the case are those that the Court already set for class
28

certification, and now those for Defendant's motion for summary judgment prescribed by the Local Rules. King. Decl. ¶7. Plaintiffs' request for a concurrent briefing schedule will not change any other deadlines and will only serve to streamline the briefing schedules. *Id.*

Alternatively, if the Court does not grant Plaintiffs' motion for a concurrent briefing schedule, Plaintiffs request that the Court at a minimum grant the extension Defendant has already agreed to as follows:

Deadline for	Current Date	Proposed Date
Opposition to Motion for Summary Judgement	February 21, 2025	March 4, 2025
Reply in Support of Summary Judgement	February 28, 2025	March 13, 2025
Hearing on Motion for Summary Judgement	March 27, 2025 at 10 a.m.	March 27, 2025 at 10 a.m.

This proposed extension does not change any deadlines in the case. King. Decl. ¶7.

Accordingly, Plaintiffs respectfully request that the Court coordinate the summary judgment and class certification briefing, and hold a single hearing on both motions, because it would be the most efficient path for the parties and the Court. Certainly it would be more efficient than the *seriatim* motion practice favored by Defendant. If the Court is not inclined to do so, Plaintiffs respectfully request that the Court grant the shorter extension to the summary judgment briefing schedule which Defendant has agreed to.

Respectfully submitted,

DATED: February 13, 2025

By: /s/ Trenton R. Kashima
Trenton R. Kashima

Trenton R. Kashima (SBN 291405)
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC**
402 W. Broadway, Suite 1760
San Diego, CA 92102
Telephone: (619) 810-7047

Email: *tkashima@milberg.com*

Nick Suciu III (*pro hac vice*)
**MILBERG COLEMAN BRYSON PHILLIPS
GROSSMAN, PLLC**
6905 Telegraph Rd., Suite 115
Bloomfield Hills, MI 48301
Telephone.: (313) 303-3472
Facsimile: (865) 522-0049
Email: *nsuciu@milberg.com*

J. Hunter Bryson (*pro hac vice*)
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC**
405 E. 50th Street
New York, NY 1002
Telephone: (919) 539-2708
Facsimile: (919) 600-5035
Email: *hbryson@milberg.com*

DATED: February 13, 2025

By: /s/ Laurence D. King
Laurence D. King

Laurence D. King (SBN 206423)
Matthew B. George (SBN 239322)
Blair E. Reed (SBN 316791)
Clarissa Olivares (SBN 343455)
KAPLAN FOX & KILSHEIMER LLP
1999 Harrison Street, Suite 1560
Oakland, CA 94612
Telephone: 415-772-4700
Facsimile: 415-772-4707
Email: *lking@kaplanfox.com*
mgeorge@kaplanfox.com
breed@kaplanfox.com
colivares@kaplanfox.com

Joel B. Strauss (*pro hac vice*)
KAPLAN FOX & KILSHEIMER LLP
800 Third Avenue, 38th Floor
New York, NY 10022
Telephone: 212-687-1980
Facsimile: 212-687-7714
Email: *jstrauss@kaplanfox.com*

Michael D. Braun
KUZYK LAW, LLP
1999 Avenue of the Stars, Ste. 1100
Los Angeles, CA 90067
Telephone: 213-401-4100
Email: *mdb@kuzykclassactions.com*

Ross B. Rothenberg (*pro hac vice*)
THE ROTHENBERG LAW FIRM LLP
450 7th Avenue, 44th Floor

New York, NY 10123
Telephone: 212-563-0100
Email: *ross@injurylawyer.com*

*Co-Lead Interim Counsel for Plaintiffs and the
Proposed Class*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Laurence D. King, attest that concurrence in the filing of this document has been obtained from the other signatory.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 13th day of February, 2025, at Oakland, California.

By: /s/ Laurence D. King
Laurence D. King